

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2974 of 2017

ORDER:

1) Aggrieved by the order, dated 20.04.2016, passed in I.A.No.1104 of 2016 in O.S.No.408 of 2015 on the file of the Additional Senior Civil Judge, Madanapalle, wherein an application filed under Order I Rule 10 of C.P.C., to implead the proposed party as defendant No.2, was dismissed, the plaintiff filed the present Civil Revision Petition, under Article 227 of the Constitution of India.

2) The petitioner/plaintiff filed O.S.No.408 of 2015 seeking a direction to the defendant to refund the suit amount with further interest at 24% p.a. on Rs.5,00,000/- from the date of suit till the date of realization. Pending the suit, I.A.No.1104 of 2016 came to be filed by the plaintiff to implead the proposed party as defendant No.2. The averments in the affidavit filed in support of the petition would show that the defendant executed an agreement of sale dated 10.01.2015 in favour of the plaintiff agreeing to sell away the Plot No.17-RU part in Sy.No.416-5 of Ponnutapalyam Village, Madanapalli Mandal, Chittoor District, for a sale consideration of Rs.25,60,000/-.

On the said date, the plaintiff paid Rs.5,00,000/- towards advance sale price. Since the defendant failed to fulfil the conditions imposed in the sale agreement and when the plaintiff asked her to fulfil the requirements as agreed in the agreement, the defendant refused to do so. As such, the plaintiff filed the above suit for recovery of money of Rs.5,00,000/- with interest. While things stood thus, on 21.01.2016 the defendant sold away the said property in favour of the proposed defendant. As such, the plaintiff filed the petition to implead the proposed party as one of the defendants in the said suit.

3) A counter came to be filed by the proposed party stating that there is no privity of contract between the plaintiff and the proposed defendant under the agreement of sale dated 10.01.2016 executed by the defendant. The plaintiff filed the suit for recovery of money and not for specific performance of agreement of sale to execute registered sale deed by the defendant in pursuance of the agreement of sale. Therefore, pleads that he is not a necessary party to the proceedings.

4) After considering the rival submissions made, the trial Court dismissed the said petition. Challenging the same, the present Civil Revision Petition is filed.

5) A perusal of Order 1 Rule 10 of the CPC would show it is open to the Court to add any such person as a necessary party in the suit, so as to enable the Court to effectively adjudicate the questions involved in the suit. Under Order 1 Rule 10 of C.P.C., impleadment can be ordered by the Court, when it finds that in the absence of the applicant seeking impleadment as party to the suit, the controversy raised in the suit cannot be effectively and completely settled.

6) The grievance of the petitioner is that subsequent to the agreement of sale in favour of the petitioner by the defendant, she sold the property to the proposed party. Admittedly, the suit is filed for recovery of money basing on the agreement of sale dated 10.01.2015 executed by the defendant in favour of the plaintiff. It is to be noted that if the suit is filed for a specific performance of agreement of sale to execute a registered sale deed by the defendant pursuant to the agreement of sale, the proposed party, who is the subsequent purchaser of the property is necessary party to the proceedings but here the suit is filed only for recovery of money. There is no proof evidencing any contract between the petitioner and the proposed party. The relief which the petitioner claim is only against the defendant and not against the proposed party. Hence, this

Court is of the view that the order under challenge, warrants no interference.

7) For the aforesaid reasons, I see no merits in the revision and the same is liable to be dismissed.

8) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

9) As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

03.07.2017  
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C. PRAVEEN KUMAR, J